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OFFICE OF PETITIONS

In re Application of :
Lee D. Whetsel :
Application No. 09/845,562 : DECISION ON PETITION
Filed: April 30, 2001 :
Attorney Docket No. TI-32106 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 4, 2007, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to file a proper and timely reply to the Notice of Non-Compliant Amendment, mailed April 4, 2006, which set a one month extendable period for reply. On July 17, 2006, the Office received a three month extension of time fee of \$1,020, a request for continued examination (RCE) under 37 CFR 1.114, and the \$790 filing fee for the RCE. A Notice of Abandonment was mailed on March 2, 2007 holding the application abandoned "because applicant can not switch the original claims invention to new claims invention by filing RCE under 37 CFR 1.114." Accordingly, the date of abandonment of this application is August 5, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuing application under 37 CFR 1.53(b) (assigned Application No. 11/695,928, filed April 3, 2007); (2) the petition fee of \$1,500; and (3) a proper statement of unintentional delay.

The petition is not accompanied by a statement of express abandonment in favor of the filing of a continuing application. In order to facilitate action, the petition to revive should include reference to the filing of a continuing application and a letter of express abandonment conditional upon the granting of the petition and of a filing date to the continuing application. Nevertheless, in view of the statement that the reply is the filing of a divisional application, this will be construed as a

request to expressly abandon this application in favor of the granting of a filing date to the continuing application. Accordingly, this application is revived solely for the purpose of continuity with continuing Application No. 11/695,928, filed April 3, 2007. As continuity has been established by the revival of this application, this application is again abandoned in favor of the continuing application. If this was not the intent of applicant, the Office should be promptly notified.

As the filing of an RCE on July 17, 2006 was improper for the reasons stated in the Notice mailed December 7, 2006, and, as requested, the \$790 filing fee for the RCE will be credited to petitioner's deposit account in due course.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.

A handwritten signature in cursive script, reading "Frances Hicks".

Frances Hicks
Petitions Examiner
Office of Petitions